

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
	:	
FRANK MORGAN,	:	Civil Action
	:	
Plaintiff,	:	No. 2:18-cv-01450
	:	
v.	:	
	:	Date: July 29, 2020
LOGAN COUNTY COMMISSION,	:	
et al.,	:	
	:	
Defendants.	:	
	x	

PARTIAL TRANSCRIPT OF MOTION MADE
DURING JURY TRIAL HELD
BEFORE THE HONORABLE THOMAS E. JOHNSTON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

For the Plaintiff:

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For the Defendants:

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Court Reporter: Ayme Cochran, RMR, CRR
Proceedings recorded by mechanical stenography;
transcript produced by computer.

Ayme A. Cochran, RMR, CRR (304) 347-3128

1 (Prior proceedings preceded the following portion.)

2 MR. NESSEL: Your Honor, I hate -- I just found
3 out moments ago, if I may, that there's another lawsuit in
4 this very courtroom against this same defendant who broke
5 somebody's jaw and Ms. Greve did not even supply us with
6 this information. Pursuant to Federal Rules of 26, she is
7 supposed to give us this information about not prior bad
8 acts, bad acts period, regarding 404(b). This guy allegedly
9 broke somebody's jaw.

10 THE COURT: Which guy?

11 MR. NESSEL: Fortune.

12 THE COURT: No, no, which defendant?

13 MR. NESSEL: Tincher. I'm sorry, Your Honor. I
14 beg your pardon. I'm a little -- I'll try to -- I'll calm
15 down.

16 This is evidence. She's filed a -- she's filed a
17 responsive pleading to the matter. She's counsel of record
18 representing Tincher in that matter. She filed a responsive
19 pleading, motion to dismiss. She knew about this when she
20 filed. She still had a duty to disclose this information to
21 us.

22 The complaint was filed two months and nine days ago.
23 The incident occurred in September of 19 -- or excuse me --
24 2019. Pursuant to the rules, she had to let us know about
25 this. She didn't. It's not a prior bad act. Just other

1 similar matters.

2 It doesn't have -- I need to bring that to the Court's
3 attention because I think Tincher needs to get up there and
4 answer some questions. Thank you.

5 THE COURT: Ms. Greve?

6 MS. GREVE: Your Honor, I'm not aware of what rule
7 that Mr. Nessel is talking about. My client has been sued
8 after this lawsuit. I don't understand -- for an incident
9 that occurred after that lawsuit. I don't understand.

10 THE COURT: Was it requested in discovery?

11 MS. GREVE: No. This incident, and we can pull up
12 the -- I have documented through numerous motions about what
13 the discovery requests were, the timing of discovery and
14 what the actual questions were. We did not have the
15 lawsuit, which is the Fortune lawsuit. Plaintiff's counsel
16 is here. We did not have that. That -- I objected here.

17 THE COURT: Are you representing Mr. Tincher in
18 that matter?

19 MS. GREVE: Yes, I am.

20 THE COURT: Well, obviously, that was filed
21 probably after the close of discovery in this case. Well,
22 don't give me that look because you have a duty to
23 supplement, okay? So, but I'm not going to -- you know
24 what? We're not going to stop this trial right now because
25 of this. We're going to continue on.

1 Mr. -- Mr. Nessel, if you made a request and she failed
2 to disclose this, we -- the Court will take that under
3 consideration and take appropriate action, but there's
4 nothing we can do about it today.

5 MR. NESSEL: Thank you, sir. Just wanted get that
6 on the record and everybody know. I make my request. Thank
7 you.

8 MS. GREVE: And there was a response filed to the
9 notice that Mr. Nessel filed for 404(b) evidence. In that
10 response that I filed, I set out the timing of discovery and
11 I also set out what the interrogatories were. And so --

12 THE COURT: The notice of 404(b) that he filed was
13 with regard to the matters that he intended to present as
14 404(b) matters at this trial. If he didn't know about this,
15 he couldn't put it in his notice. So, that doesn't get you
16 anywhere.

17 MS. GREVE: That was the -- this is why -- it is
18 the same thing because Kerry Nessel complained in that in
19 which he filed that I didn't disclose to him about Tony
20 Meade. And so, it is -- it's the same argument from
21 plaintiff's counsel and it's the same response from defense
22 counsel with the exception of the date. There was no
23 limitation in the discovery request on date and I objected.
24 I did disclose the Tony Meade incident because that was not
25 something I objected to from a chronological standpoint.

1 There was never a motion to compel. There was never a
2 phone call from Kerry Nessel about, hey, Wendy, what --

3 THE COURT: Listen, listen, we're not going to
4 litigate this today.

5 MR. NESSEL: Thank you, Your Honor.

6 THE COURT: I know how the game is played. You
7 assert a broad objection and then you throw out a little bit
8 of information and it completely throws counsel off because
9 then they don't know -- they don't know what they don't
10 know. I get that. I understand how this works. I've been
11 around this block. But we're not going to deal with it
12 today.

13 This might not go well for you if he can demonstrate
14 that he requested this information and you didn't provide
15 it. You're on notice of that. But we're not going to deal
16 with it today.

17 MR. NESSEL: Thank you. And I have nothing else
18 to say.

19 MS. GREVE: Thank you, Your Honor.

20 THE COURT: Alright. Let's bring the jury in and
21 try to make some progress.

22 (Jury returned to open court.)

23 (Conclusion of transcript portion; further proceedings
24 held.)

25

1 CERTIFICATION:

2 I, Ayme A. Cochran, Official Court Reporter, certify
3 that the foregoing is a correct transcript from the record
4 of proceedings in the matter of Frank Morgan,
5 Plaintiff/Counterclaim Defendant v. Logan County Commission,
6 et al., Defendants/Counterclaim Plaintiffs, Civil Action No.
7 2:18-cv-01450, as reported on July 29, 2020.

8
9 s/Ayme A. Cochran, RMR, CRROctober 21, 2020

10 Ayme A. Cochran, RMR, CRR

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